

## § 238.8

acting alone. If a joint effort is preferable, then the Corps may participate as required.

(e) *Disagreements.* If a disagreement arises between the Corps and another Federal agency that cannot be resolved at the field level, the matter will be forwarded to HQDA (DAEN-CWR) WASH DC 20314 for guidance.

## § 238.8 Other participation.

In addition to providing flood damage reduction works in urban areas, the Corps may provide related services to State and local governments on a reimbursable basis. Under Title III of the Inter-governmental Cooperation Act of 1968, specialized or technical services for which the Corps has specific expertise may be furnished only when such services cannot be procured reasonably and expeditiously from private firms (see ER 1140-2-303).

## § 238.9 Local cooperation.

(a) Cost sharing and other provisions of local cooperation shall be in conformity with applicable regulations for structural and non-structural flood damage reduction measures.

(b) Responsible non-Federal entities will be required to provide satisfactory assurances that they will adopt, enforce, and adhere to a sound, comprehensive plan for flood plain management for overflow areas of communities involved. To this end, District Engineers will inform HUD, and other concerned Federal and non-Federal planning and governing agencies, of flood plain management services available under Section 206 of the Flood Control Act of 1960, as amended (33 U.S.C. 709a).

## § 238.10 Coordination with other Federal agencies.

In conducting flood damage reduction studies, reporting officers shall comply with the 1965 Agreement between the Soil Conservation Service and the Corps (contained in EP 1165-2-2) in determining the responsible Federal agency. Corps personnel should also keep abreast of the public works programs administered by other Federal agencies, such as the Environmental Protection Agency, the Department of Housing and Urban Develop-

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ment, Farmers Home Administration and the Department of Commerce, in order to coordinate flood control improvements with storm sewer system improvements and to avoid program overlap. Coordination of planning activities with A-95 clearinghouses will help to achieve this objective (see ER 1105-2-811).

## PART 239—WATER RESOURCES POLICIES AND AUTHORITIES: FEDERAL PARTICIPATION IN COVERED FLOOD CONTROL CHANNELS

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AUTHORITY: Pub. L. 738, 74th Congress 33 U.S.C. 701a.

SOURCE: 43 FR 47470, Oct. 13, 1978; 44 FR 36175, June 21, 1979, unless otherwise noted.

## § 239.1 Purpose.

This regulation establishes policy for determining the extent of Federal participation in covered flood control channels.

## § 239.2 Applicability.

This regulation applies to all OCE elements and all field operating agencies having civil works responsibilities.

## § 239.3 References.

(a) Executive Order 11988, Floodplain Management, 24 May 1977.

(b) ER 1105-2-200.

(c) ER 1165-2-21.

## § 239.4 Policy.

Projects will be formulated and evaluated in accordance with the policies and procedures described in ER 1105-2-200. If, during the planning process, it appears that covered flood control channels are desirable, reporting officers may evaluate them and include them when they best serve the public interest. Selection of the plan which

best serves the public interest is based upon the ability of the plan to meet planning objectives, the contributions which the plan makes to the National Economic Development (NED), Environmental Quality (EQ), Regional Development (RD) and Social Well Being (SWB) accounts, and the public response to alternative plans. Thus, covered flood control channels may be proposed if they are desired by the public and (a) increase net EQ and/or NED benefits; or, (b) reduce adverse effects on RD or SWB without incurring an unjustified loss in net NED or EQ benefits.

#### § 239.5 Engineering considerations.

Reports on proposals to provide covered channels shall include a discussion of the following matters.

(a) Impacts of sudden reduction in discharge and increased upstream channel stages when the channel entrance is submerged. This discussion shall include the effects resulting from the SPF.

(b) Dangers of rupture resulting from pressurization.

(c) Features provided to prevent human ingress and their impact on project functions.

(d) Effect of the cover on inspection and maintenance costs.

(e) Features provided for pressure release and air venting.

(f) Need for a storm warning system.

(g) Facilities provided to divert flows exceeding the design flow.

#### § 239.6 Level of protection.

Evaluation of the above items may indicate that submergence of entrances to covered channels may have significant impacts on the level of flooding. The requirements of EO 11988 and the significance of the resulting flood damage may require that the covered portion of the channel be enlarged to provide capacity to pass the SPF. If inclusion of SPF capacity on the covered portions of the project cannot be justified, the added capacity may be reduced to the extent that the project will not increase upstream stages resulting from the SPF when compared to the without-project condition. If this capacity is still not feasible, cov-

ered channels shall not be recommended.

#### § 239.7 Separation of flood control works from urban drainage.

Covered channels are likely to be considered in boundary areas demarking urban drainage and flood control. Reporting officers shall apply the policies given in ER 1165-2-21 to separate flood control facilities from urban drainage facilities.

#### § 239.8 Cost sharing.

At local protection projects local interests are required to provide all lands, easements, rights-of-way and all alterations and relocations of utilities, streets, bridges, buildings, storm drains and other structures and improvements; hold and save the United States free from damages due to the construction works except damages due to the fault or negligence of the United States or its contractor; and assume operation and maintenance of the works after completion. In addition, local interests are required to provide additional cost sharing to reflect special local benefits or betterments. Such additional special cost sharing will not be required for covered channels when the addition of the cover increases net NED flood control benefits when compared to the open channel or when they are provided for safety in schoolyards, playgrounds, or other known play areas for juveniles. However, the separable cost of providing covers for mitigating SWB or RD impacts or to provide areas for public or private uses such as parking, or the provision of areas for recreation development, etc., will be assigned to local interests. The separable cost of recreational facilities to be constructed on or adjacent to the cover, i.e. picnic facilities, etc., are eligible for Federal participation in accordance with cost-sharing policies for recreation facilities at local protection projects. Cost-sharing policies for project features which are included to make positive contributions to the EQ account are being developed. Until such policies are developed, proposals to cover channels on this basis will be coordinated with HQDA (DAEN-CWP), Washington, D.C. 20314.

**§ 239.9 Effective date.**

These regulations are applicable to all projects not approved by OCE prior to the date of this regulation.

**PART 240—GENERAL CREDIT FOR FLOOD CONTROL**

Sec.

240.1 Purpose.

240.2 Applicability.

240.3 Reference.

240.4 Legislative provisions.

240.5 Discussion.

240.6 General policy.

240.7 Credit criteria for projects authorized on or before 17 November 1986.

240.8 Credit criteria for projects authorized after 17 November 1986.

240.9 Procedures.

APPENDIX A TO PART 240 [RESERVED]

APPENDIX B TO PART 240—FORMULAS FOR DETERMINING AMOUNT OF ALLOWABLE CREDIT

AUTHORITY: Section 104, Water Resources Development Act of 1986 (Pub. L. 99-662); 33 U.S.C. 2214.

SOURCE: 52 FR 44113, Nov. 18, 1987, unless otherwise noted.

**§ 240.1 Purpose.**

This establishes guidelines and procedures for Department of the Army application of the provisions of section 104 of Pub. L. 99-662.

**§ 240.2 Applicability.**

Policies and procedures contained herein apply to all HQUSACE elements and field operating agencies of the Corps of Engineers having Civil Works responsibilities.

**§ 240.3 Reference.**

Section 104 of Pub. L. 99-662.

**§ 240.4 Legislative provisions.**

Section 104 authorizes and directs the development of guidelines which include criteria for determining whether work carried out by local interests is compatible with a project for flood control. Compatible work which was carried out prior to project authorization, before 17 November 1986 but after 17 November 1981, may be considered part of the project and credited against the non-Federal share of the cost of project, if the local sponsor applied for consideration of such work not later

than 31 March 1987. Local work to be carried out after 17 November 1986 must receive Army approval prior to construction to be eligible for credit, taking into account the economic and environmental feasibility of the project. (Such approval can only be given on the basis of the guidelines required to be issued pursuant to section 104(a); hence, the law is silent with respect to work performed between 17 November 1986 and the effective date of the guidelines.) The credit will not relieve the non-Federal sponsor of the requirement to pay 5 percent of the project costs in cash during construction of the remainder of the project. This legislative authority also provides that benefits and costs of compatible work will be considered in the economic evaluation of the Federal project. This includes the costs and benefits of compatible local work which was carried out after 17 November 1981 or within the 5 years prior to the initial obligation of reconnaissance study funds if that should establish a later date.

**§ 240.5 Discussion.**

Discussion of this legislation is contained in the Conference Report, H.R. Rpt. No. 99-1013, which accompanies H.R. 6. The House passed version of the bill contained a number of project-specific provisions that authorized credit against the non-Federal share for compatible work completed by local interests. The Senate passed version authorized crediting of compatible flood control works for projects under study. Both general provisions would enable local interests to proceed with compatible work on the understanding that the local improvements would be considered a part of the Federal project for the purpose of benefit-to-cost analysis, as well as subsequent cost sharing. The Conference Committee deleted virtually all of the crediting provisions applicable to individual projects and expanded the general provision allowing the Secretary to credit the cost of certain work undertaken by local interests prior to project authorization against the non-Federal share of project costs and to consider the benefits and costs in the economic evaluation of a more comprehensive project.